IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.345 OF 2003

IN

SUMMARY SUIT NO.2036 OF 2001

LIC Housing Finance Ltd .. Plaintiff

versus

Cable Corporation of India Ltd .. Defendant

...

Mr. Uttamchand i/b Consulta Juris for Plaintiff.

Mr. C.Ardeshir i/b Kanga & Co for Defendant.

CORAM : D.G. KARNIK, J

DATED : 2nd February, 2005.

P.C:-

1. Heard learned counsel for the parties. This Summons for Judgment is taken out in a suit for recovery of the money. The plaintiff had subscribed to the preference shares and it is alleged that the preference shares are not redeemed. The amount of preference shares is claimed as dues in this suit. It is a settled position in law that preference share

holder is a member of the company and not a creditor. In two decisions viz: State Bank of India vs Alstom Power Boilers Ltd, reported in 2003 (116) Company cases 1 and SBI Capital Markets Ltd vs S.Kumar Nationwide Ltd (Appeal No.464 of 2004 decided on 5th August, 2004 Coram: R.M.Lodha and J.P.Devadhar, JJ) this court has taken a view that preference share holder is not a creditor of a company. In the circumstances, the defendant is entitled to an unconditional leave to defend the suit. Hence, the defendant is granted unconditional leave to defend the suit. Suit shall stand transferred to the list of commercial causes. Defendant to file the written statement within one month.

D.G.KARNIK, J